

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
EASTERN DIVISION

FILED BY 4 D.C.  
05 JUN 27 AM 8:16  
ROBERT R. DI TROLO  
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W.D. OF TN-JACKSON

LARRY S. MELTON, et al.,

Plaintiffs,

VS.

JOHN JEWELL, et al.,

Defendants.

No. 02-1242-T-An

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ORDER DENYING APPEAL OF MAGISTRATE'S ORDER ON  
SCHEDULING ORDER

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Defendants' motion for a new scheduling and planning conference was referred to Magistrate Tu M. Pham. On May 17, 2005, Magistrate Judge Pham issued a ruling, setting new discovery dates. Plaintiffs Johnny Melton and Blankenship/Melton Aviation, Inc., have filed an appeal of that order on the ground that "rescheduling discovery and depositions until September 1, 2005, rewards the defendant for six months of inactivity while delaying Plaintiff's day in court." Appeal at p. 1.

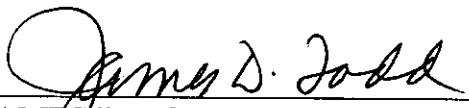

A party aggrieved by the magistrate judge's order may seek review of it by appealing to the district court within ten days after being served with a copy of the order. See Local Rule 72.1(c). The district court's review of any discovery-related decisions made by the magistrate judge is governed by Rule 72(a) of the Federal Rules of Civil Procedure, which

provides: "The district judge to whom the case is assigned shall consider such objections and shall modify or set aside any portion of the magistrate judge's order found to be clearly erroneous or contrary to law." Fed. R. Civ. P. 72(a); see also § 28 U.S.C. 636(b)(1). "The clear error standard means that the district court can overturn the magistrate judge's ruling only if the district court is left with the definite and firm conviction that a mistake has been made." Weeks v. Samsung Heavy Indus. Co., 26 F.3d 926, 943 (7<sup>th</sup> Cir. 1997).

In the present case, the mere assertions that Plaintiff's "day in court" will be delayed or that Defendants will be "rewarded" by a delay are not sufficient to show that the ruling of Magistrate Judge Pham is "clearly erroneous or contrary to law." Therefore, Plaintiffs' appeal is DENIED.

Magistrate Judge Pham's order states that the trial date will be set by the presiding judge. Scheduling Order, 5/17/05. Accordingly, the non-jury trial of this matter is hereby SET for **Monday, November 14, 2005, at 9:30 a.m.** A joint pretrial order will be due no later than **Friday, November 4, 2005.**

IT IS SO ORDERED.

  
\_\_\_\_\_  
JAMES D. TODD  
UNITED STATES DISTRICT JUDGE  
  
\_\_\_\_\_  
DATE



## Notice of Distribution

This notice confirms a copy of the document docketed as number 63 in case 1:02-CV-01242 was distributed by fax, mail, or direct printing on June 27, 2005 to the parties listed.

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Honorable James Todd  
US DISTRICT COURT